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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,027	08/26/2003	Larry B. McAllister JR.	D-43656-01	3484

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Cryovac, Inc.
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EXAMINER

TARAZANO, DONALD LAWRENCE

ART UNIT	PAPER NUMBER
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1773

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/22/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/648,027

Applicant(s)

MCALLISTER ET AL.

Examiner

D. Lawrence Tarazano

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-15, 17-22, 24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-15, 17-22, 24 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/13/2006</u> | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/13/2006 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 7-15, 17-22, and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schoenberg (4,514,465) in view of Longmoore et al (6,497,965) and Plume (6,846,863) and applicant's admissions. "Amide waxes have been used for many years as slip agents in the production of films. Chemically, the waxes are primary, secondary, tertiary, or bis fatty amides, such as oleamide and erucamide." (page 1, lines 29-30).

4. It is well known in the art that fatty acid amide materials migrate and that they are conventionally used in the art as slip agents. The applicants freely admit the materials migrate and bloom to the surface (page 1, lines 37+) to give the polymeric films slip properties.

5. "Producers of films also operate on a second principle that packaging applications typically require a film with a low coefficient of friction (COF). This requirement is dictated by the need for the film to run properly on packaging equipment used by food producers and other packagers." (page 2, lines 5+).

6. However, there are problems if " a significant amount of wax migrates to the surface" (page 2, lines 28+).

7. Schoenberg teaches five-layer polyethylene films having antiblocking particles on the surface layers and comprise amide slip agents. However, he is silent regarding the use of slip agents in the intermediate layers in a higher amount than the surface layers.

8. Plume et al. teach that all sorts of lubricants can be use in polyethylene materials (column 2) including fatty acid amide. Additionally materials such as calcium searate can be added as an anti acid component. All of these are considered to be conventional additives (column 2, lines 27+).

9. Longmoore et al. also teach using fatty acid amides in the core layer of films. They state that "slip agent is frequently incorporated into the core layer of composite films, which are then heat treated to force it to migrate to the surface layers" (column 4, lines 37+).

10. It would have been obvious to one having ordinary skill in the art to have used higher levels of sterates and fatty acid amides in the intermediate layers of the films taught by Schoenberg in order to control the bloom of the slip agents to the surface of the films. It also would have been obvious to one having ordinary skill in the art at the time the invention was made to have used the claimed additive combinations as each of the materials used by the

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applicant are conventional additives used in the production of plastic films. The use of the materials would improve the lubrication of the films and function as anti acid materials. The specific amount of fatty acid on the surface is a result effective variable. There must be sufficient material to give desired slip properties but not so much that it interferes with the machinery or sealing properties.

11. While the applicants state that they have unexpected result for the claimed combination of materials, there is nothing on the record to show that this is the case. There is only one comparative example, and it provides no showing on this aspect of the invention.

12. It is the examiner's position that applicants are using conventional additives. The applicants may have unexpected results for the combination of materials, but a strong showing would be needed to overcome the rejection. The applicants' showing is not commensurate in scope with the breath of their current claims.

13. The applicants amended the claims to state that all the layers comprise primary fatty amidic acid and that outer layers comprise a fraction of the amount of material present in one of the first and second substrate layers. As discussed above, Longmoore et al. teach that the fatty acid materials may be added to interior layers. The current claimed invention would be arrived at in those instances where the fatty acid materials were added to the layers interior to the surface layers and then allowed to migrate (bloom). The concentration gradient would naturally follow the claimed values (15% - 50% of the amount in the substrate layers) as the material would migrate from a high concentration in the originating layer toward the surface. Additionally, the specific amount (10 to 15 g/square inch) is directly related to how the film functions and the slip properties realized.

Response to Arguments

14. Applicant's arguments filed 12/13/2006 have been fully considered but they are not persuasive. The applicants have more clearly defined the relationship of the layer and the fatty acid materials; however, placing the additives in the interior layers would arrive at this arrangement. This type of arrangement is suggested by the prior art. The applicants admit that fatty acid amides are typically used a slip agent and that they migrate. The prior art also recognizes that the materials may be placed in the interior of films. While the applicants have amended the claims to recite more specific concentrations of slip agents, it is the examiner's position that this is clearly a result effective variable, and the gradient claimed would flow from the suggestions in the prior and the recognized migratory behavior of the additives.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. Lawrence Tarazano whose telephone number is (571)-272-1515. The examiner can normally be reached on 8:30 to 6:00 (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carol Chaney can be reached on (571)-272-1284. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

D. Lawrence Tarazano
Primary Examiner
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A handwritten signature in black ink, appearing to be 'DLT' or similar, enclosed within a hand-drawn oval shape.